

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, et al;

Plaintiffs,

v.

BRIAN P. KEMP, et al.;

Defendants.

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CIVIL ACTION

FILE NO: 1:17cv02989-AT

**FULTON COUNTY DEFENDANTS’
RESPONSE TO PLAINTIFF COALITION FOR GOOD GOVERNANCE
MOTION FOR LEAVE TO FILE A THIRD
AMENDED COMPLAINT**

COME NOW the Fulton County Board of Registration and Elections (“FCBRE”), Director Richard Barron, and members of the FCBRE, Mary Carole Cooney, Vernetta Nuriddin, David J. Burge, Stan Matarazzo, Mark Wingate and Aaron Johnson, (hereafter “Fulton County Defendants”) through counsel, and hereby respond to Plaintiff’s Motion For Leave to File a Third Amended Complaint as follows:

This lawsuit was originally filed in the Superior Court of Fulton County on

July 3, 2017 and was removed to this Court. This action has been pending in this Court since August 8, 2017 (Notice of Removal with Complaint; Doc. 1). Now, some of the Plaintiffs attempt to restart the litigation by filing another amended Complaint. The requested amendment should be denied because of the delay and confusion that it will cause. If this Court were to grant the proposed amendment, additional delay would inherently follow because the proposed amended complaint does not involve all of the Plaintiffs or all of the Defendants. Thus, the Court would inevitably have to track and rule on two sets of claims in the one case.

During the pendency of this action, Defendant's Fulton County has sequestered electronic voting equipment pursuant to Plaintiffs' prior counsels' placement of a litigation hold on Fulton County Registration and Elections Direct Recording Electronic (DRE) voting equipment and media inventory that was used in the elections held in April and June of 2017. *See* Affidavit of Richard Barron, ¶ 4 attached to Defendant Fulton County's Motion to for Status Conference (Doc. 169). Defendant Fulton County is now again on the eve of an election and the litigation hold continues to hamper our ability to provide election services to its citizens. The undue burden that the litigation holds has placed on Fulton County has been outlined in Fulton County's Motion to for Status Conference and its attached affidavit (Doc. 169). The additional delay that would be caused by the

grant of the proposed amended complaint would further cripple Fulton County's ability to provide sufficient election services. Plaintiffs have failed to identify a sampling of the electronic voting machines as former counsel initially communicated. Thus, Fulton County's voting equipment has been effectively held in limbo for the better part of a year.

Given the undue burden that has been placed on Fulton County and the withdrawal of former Plaintiffs' counsel from this case, Fulton County requests that it be relieved from the litigation hold that was previously filed and which has resulted in the sequestration and inability to utilize 762 voting machines (756 DREs and 6 Optical Scanners (OS)). This number of machines amounts to twenty four percent of Fulton County's DRE inventory and fifteen percent of the OS inventory which could be distributed so as to provide more efficient voting services to its electors. Access to this equipment can amount to additional voting equipment being made available in polling locations and more inventories to address equipment failures that may occur during advance voting and on voting day. The increased capability that would result from availability of the currently sequestered equipment could ultimately amount to shorter lines and less wait time for electors during advance voting and on Election Day.

To the extent the proposed Third Amended Complaint filed by Plaintiffs

contains new allegations regarding Fulton County's conduct on Election Day; such claims are barred by Plaintiffs' failure to exhaust administrative remedies. The State Election Board has undertaken an investigation into these activities and is the proper entity to determine if election laws, rules or regulations were in fact violated by those conducting elections. As such, Plaintiffs are barred from first seeking relief in the courts.

Additionally, rather than streamlining this lawsuit, the proposed third amendment of the complaint would fracture this case into two lawsuits for all practical purposes. Indeed, "[b]ecause of the inherent confusion that would result from fracturing the case with different complaints, the Coalition Plaintiffs' unilateral motion (without the consent of their Co-Plaintiffs), satisfies none of the relevant criteria for a proper amendment under Rule 15. The 'streamlining' promised by Coalition Plaintiffs' Motion (Doc. 160 at 2), is a mirage." Defendants Kemp and State Election Board officials Response to Motion for Leave to File Third Amended Complaint, pp.1-2.

Accordingly, Fulton County joins in the arguments asserted by Secretary Kemp and the State Elections Board in response to the Third Motion to Amend the Complaint and asks that the Court deny Plaintiff CGG's Motion.

Respectfully submitted this 18th day of April, 2018.

**OFFICE OF THE COUNTY
ATTORNEY**

/s/David R. Lowman

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CERTIFICATE OF SERVICE

I hereby certify, that on this date, I have electronically filed the foregoing **FULTON COUNTY DEFENDANTS' RESPONSE TO PLAINTIFF COALITION FOR GOOD GOVERNANCE'S MOTION FOR LEAVE TO FILE A THIRD AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system, with the Clerk of Court using the CM/ECF system, which will send email notification of such filing to all attorneys of record.

This 18th day of April, 2018.

/s/ David R. Lowman

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